



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R10-OAR-2012-0557: FRL-9917-07-Region 10]

Approval and Promulgation of Implementation Plans; Swinomish Indian Tribal Community; Tribal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Tribal implementation plan (TIP) submitted by the Swinomish Indian Tribal Community (SITC or the Tribe). The SITC TIP regulates open burning practices and establishes a Tribal regulatory program applicable to all persons within the exterior boundaries of the Swinomish Reservation (Reservation). The SITC TIP was submitted to the EPA on June 28, 2012, and supplementary submittals were received on September 24, 2013, November 18, 2013, and January 28, 2014. This action makes the approved portions of the SITC TIP federally enforceable under the Clean Air Act (CAA). Upon the effective date of this action, the SITC TIP will replace the Federal Implementation Plan (FIP) provisions that regulate open burning within the exterior boundaries of the Reservation.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2012-0557. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of

which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT-150, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel at (206) 553-6121, vaupel.claudia@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

I. Summary of the Proposed Action

On May 2, 2014 (79 FR 25049), the EPA proposed to approve a TIP submitted by the SITC on June 28, 2012, and supplementary submittals received on September 24, 2013, November 18, 2013, and January 28, 2014. The SITC TIP regulates open burning and establishes a Tribal regulatory program to maintain or improve ambient air quality related to open burning. The SITC TIP applies to all persons within the exterior boundaries of the Swinomish Reservation and includes regulations governing prohibited materials, burn bans, open burning permit requirements and fees, and provisions related to enforcement of the TIP. For a more detailed description of our evaluation of the SITC TIP and our rationale for the proposed action, please see the May 2, 2014, proposed rule which can be found in the docket for today’s action. No public comments were received on the proposed rule.

II. Final Action

Under CAA sections 110(o), 110(k)(3) and 301(d), the EPA is taking final action to approve the TIP submission as discussed in our May 2, 2014 proposal. Upon the effective date of this action, the SITC TIP for open burning will apply to all persons within the exterior boundaries of the Reservation and will replace the existing open burning provisions in the FIP for the Swinomish Reservation (40 CFR 49.10956(g) and 49.10960(g)). As discussed in the proposed rule, the EPA is approving, but not incorporating by reference into the CFR, the enforcement-related authorities in the SITC TIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves laws of an eligible Indian Tribe as meeting Federal requirements and imposes no additional requirements beyond those imposed by Tribal law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). Because this rule approves pre-existing requirements under Tribal law and does not impose any additional enforceable duty beyond that required by Tribal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable

process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” The EPA has concluded that this rule will have Tribal implications in that it will have substantial direct effects on the SITC. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. The EPA is approving the SITC’s TIP at the request of the Tribe. Tribal law will not be preempted as the SITC has already incorporated the TIP into Tribal Law on March 9, 2012. The Tribe has applied for, and fully supports, the approval of the TIP. This approval makes the TIP federally enforceable.

The EPA worked with Tribal air program staff early in the process of developing the TIP to allow for meaningful and timely input into its development. To administer an approved TIP, Indian Tribes must be determined eligible (40 CFR part 49) for TAS for the purpose of administering a TIP. During the TAS eligibility process, the Tribe and the EPA worked together to ensure that the appropriate information was submitted to the EPA. The SITC and the EPA also worked together throughout the process of development and Tribal adoption of the TIP.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a TIP covering areas within the exterior boundaries of the Swinomish Reservation, and does not alter the relationship or the distribution of power and responsibilities between States and the Federal government established in the Clean Air Act. This action does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994). This action also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing TIP submissions, the EPA’s role is to approve an eligible Indian Tribe’s submission, provided that it meets the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the Indian Tribe to use voluntary consensus standards (VCS), the EPA has no authority to disapprove a TIP submission for failure to use VCS. It would thus be inconsistent with applicable law for the EPA, when it reviews a TIP submission, to use VCS in place of a TIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272 note) do not apply to this action.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after publication in the Federal Register]**. Only an objection to this final action that was raised with reasonable specificity during the public comment period can be raised during judicial review. Upon request, adequately supported, the Administrator may convene a proceeding for reconsideration of this final action. Filing a petition requesting that the Administrator reconsider this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. (*See* CAA section 307(b)(1).) This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Indians, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 8, 2014.

Dennis J. McLerran,
Regional Administrator,
Region 10.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 49 as follows:

PART 49 – INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

1. The authority citation for Part 49 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 49.10952 is revised to read as follows:

§ 49.10952 Approval status.

The implementation plan for the Swinomish Reservation includes the EPA-approved Tribal rules and measures identified in § 49.10957.

3. Section 49.10956 is amended by removing and reserving paragraph (g) and by adding new paragraph (l) to read as follows:

§49.10956 Contents of implementation plan.

* * * * *

(g) [Reserved]

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(l) The EPA-approved Tribal open burning rules and measures approved in § 49.10957.

(1) Title, authority, jurisdiction, definitions.

(2) Open burning.

(3) Public involvement.

(4) Appeals.

(5) Repealer, severability and effective date.

(6) Enforcement.

(7) Hearings, appeals, computation of time and law applicable.

4. Section 49.10957 is added to read as follows:

§ 49.10957 EPA-approved Tribal rules and plans.

(a) *Purpose and scope.* This section contains the EPA-approved Tribal rules and measures in the open burning tribal implementation plan (TIP) for the Swinomish Indians. The open burning TIP consists of a program, procedures, and regulations that cover prohibited materials, burn bans, open burning permit requirements and fees, and enforcement.

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material is incorporated as it exists on the date of the approval and notice of any change in the material will be published in the **Federal Register**.

(2) The EPA Region 10 certifies that the rules/regulations provided by the EPA in the Tribal implementation plan (TIP) compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated Tribal rules/regulations which have been approved as part of the TIP as of August 4, 2014.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10 Office at 1200 Sixth Avenue, Seattle WA, 98101; the EPA, Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) *EPA-approved regulations.*

**EPA-APPROVED SWINOMISH INDIANS OF THE SWINOMISH RESERVATION
WASHINGTON REGULATIONS**

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Swinomish Tribal Code Title 19 Environmental Protection, Chapter 2 – Clean Air Act (Swinomish TIP for Open Burning Part II)				
19-02.020	Title Authority	3/9/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
19-02.030	Jurisdiction	3/9/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
19-02.040	Definitions	3/9/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
Subchapter II – Open Burning				
19-02.080	Applicability of Subchapter	3/9/12	[Insert <u>Federal Register</u> publication date],	

			<u>[Insert Federal Register citation]</u>	
19-02.090	General Rules for Open Burning	3/9/12	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	Except D
19-02.100	Burn Bans	3/9/12	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	
19-02.110	Open Burn Permits	3/9/12	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	
19-02.120	Special Use Permits	3/9/12	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	
19-02.130	Open Burn and Special Use Permit Fees	3/9/12	<u>[Insert Federal Register publication date], [Insert</u>	Except B

			<u>Federal Register citation]</u>	
19-02.140	Standard Permit Conditions	3/9/12	[Insert <u>Federal Register publication date]</u>, [Insert <u>Federal Register citation]</u>	
19-02.150	Additional Permit Conditions	3/9/12	[Insert <u>Federal Register publication date]</u>, [Insert <u>Federal Register citation]</u>	
19-02.160	Burn Notification and Inspection	3/9/12	[Insert <u>Federal Register publication date]</u>, [Insert <u>Federal Register citation]</u>	
Subchapter III – Public Involvement				
19-02.170	Public Information	3/9/12	[Insert <u>Federal Register publication date]</u>, [Insert <u>Federal Register citation]</u>	
19-02.180	Public Hearings	3/9/12	[Insert <u>Federal Register publication date]</u>, [Insert	

			<u>Federal Register citation</u>	
Subchapter V – Appeals				
19-02.240	Sovereign Immunity	3/9/12	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	
Subchapter VI – Repealer, Severability and Effective Date				
19-02.250	Repealer	3/9/12	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	
19-02.260	Severability	3/9/12	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	
19-02.270	Effective Date	3/9/12	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	

(d) *[Reserved]*

(e) *EPA-approved nonregulatory provisions and quasi-regulatory measures.*

**EPA-APPROVED SWINOMISH INDIANS OF THE SWINOMISH RESERVATION
WASHINGTON NONREGULATORY PROVISIONS AND QUASI-REGULATORY
MEASURES**

Table 1—Air Quality Plans

Name of Plan	Tribal submittal date	EPA approval date	Explanations
Swinomish Tribal Implementation Plan for Open Burning (Swinomish TIP, Part I)	11/18/13	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	Except the section on “Adoption Process and Procedure”

Table 2—Swinomish Tribal Code Approved but Not Incorporated by Reference

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Swinomish Tribal Code Title 19 Environmental Protection, Chapter 2 – Clean Air Act (Swinomish TIP for Open Burning Part II)				
Subchapter IV – Enforcement				
19-02.190	Enforcement	3/9/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
19-02.200	Penalties	3/9/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	

19-02.210	Damages	3/9/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
Subchapter V – Appeals				
19-02.220	Appeals of Department Decisions	3/9/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
19-02.230	Tribal Administrative Remedies and Tribal Court	3/9/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
Title 19 – Environmental Protection, Chapter 4 – Shorelines and Sensitive Areas Act				
Subchapter IX – Hearings, Appeals, Computation of Time and Law Applicable				
19-04.560	Request for Hearing Before the Planning Commission	8/18/05	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
19-04.570	Hearings by the Planning Commission	8/18/05	[Insert <u>Federal Register</u> publication date],	

			<u>[Insert Federal Register citation]</u>	
19-04.580	Appeals of Planning Commission Decisions	8/18/05	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	
19-04.590	Appeals of Senate Decisions	8/18/05	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	
19-04.600	Time and Finality	8/18/05	<u>[Insert Federal Register publication date], [Insert Federal Register citation]</u>	

5. Section 49.10960 is amended by removing and reserving paragraph (g) to read as follows:

§49.10960 Federally-promulgated regulations and Federal implementation plans.

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(g) [Reserved]

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